

Department of Health
Notice of Rulemaking Hearing
Tennessee Massage Licensure Board
Division of Health Related Boards

There will be a hearing before the Tennessee Massage Licensure Board to consider the promulgation of amendments to rules and repeal of a rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-1-111, 63-1-138, 63-18-102, 63-18-104, 63-18-105, 63-18-106, 63-18-108, 63-18-111, 63-18-112, 63-18-115, and Public Chapters, 232, 234 and 467 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 18th day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0870-1-.01 Definitions, is amended by deleting paragraph (10) in its entirety and substituting instead the following language, and is further amended by adding the following language as new, appropriately alphabetized and numbered paragraphs, so that as amended, the new paragraph (10) and the new appropriately alphabetized and numbered paragraphs shall read:

- (10) Establishment - Any location, or portion thereof, which advertises and/or provides to the public massage therapy services on the premises for compensation. Any licensed health care facility or any health care professional's office wherein massage therapy services are not advertised or provided except on an occasional outcall basis is not an establishment for purposes of this rule. Any location within

a licensed health care facility or any health care professional's office which is dedicated to and maintained for the use of a massage therapist who performs occasional massage therapy services to the patients of the facility is a massage establishment for purposes of licensure under these rules and the portions of the facility or office wherein massage therapy services are provided must be in compliance with the standards established in rule 0870-1-.02. The term "occasional" as used in this rule means not more than twice in a one (1) week period.

- () Massage/bodywork/somatic – The manipulation of the soft tissues of the body with the intention of positively affecting the health and well being of the client.
- () Outcall – The provision of massage services outside of an "establishment" as defined by this rule and in a location at which there is neither the regular provision of nor the advertising of such services. For purposes of this definition, the term "regular" means more than twice in a one (1) week period.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, and 63-18-111.

Rule 0870-1-.02 Practice Standards and Inspection of Establishments, is amended by deleting parts (2) (b) 4. and (5) (c) 3. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (5) (d) but not its parts, and substituting instead the following language, and is further amended by deleting part (5) (d) 3. in its entirety and substituting instead the following language, so that as amended, the new parts (2) (b) 4. and (5) (c) 3., the new subparagraph (5) (d) but not its parts, and the new part (5) (d) 3. shall read:

- (2) (b) 4. The person to whom the establishment license is issued shall be responsible for maintaining all parts thereof in a sanitary condition at all times, and for otherwise insuring that such establishment is operated in compliance with this Chapter. However, this rule shall not relieve any individual therapist of responsibility for the sanitary conditions of the space or equipment used in their practice.
- (5) (c) 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-1-.06.
- (5) (d) Failure to Allow or Appear for Inspection – An establishment whose owner or operator fails to allow an inspection to be scheduled shall be deemed to have failed the inspection. An establishment whose owner or operator does not appear for his/her scheduled inspection shall be deemed to have failed the inspection unless the Board's administrative office or the Board's authorized representative is notified at least twenty-four (24) hours prior to the scheduled appointment time for inspection. In either circumstance, a subsequent scheduled inspection shall be

considered as a reinspection. When a reinspection is necessitated as a result of either circumstance, the following shall occur:

- (5) (d) 3. The reinspection fee shall be submitted with the application, pursuant to Rule 0870-1-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-106, 63-18-108, and 63-18-111.

Rule 0870-1-.03 Necessity of Licensure, is amended by adding the following language as new paragraphs (3) and (4):

- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles "Massage Therapist (M.T.)" or "Licensed Massage Therapist (L.M.T.)" and to practice massage therapy, as defined in T.C.A. § 63-18-102. Violation of this rule, rule 0870-1-.19 (1) (q), or T.C.A. § 63-18-108 regarding use of titles shall constitute unethical conduct and subject the licensee to disciplinary action.
- (4) Students may not hold themselves out as massage therapists until such time as they are licensed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-102, 63-18-104, 63-18-105, 63-18-108, 63-18-111, and Public Chapter 467 of the Public Acts of 2005.

Rule 0870-1-.04, Licensure and Provisional Licensure Process, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting subpart (1) (f) 1. (iii) in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparts (1) (f) 1. (iv) and (1) (f) 1. (v), and is further amended by deleting subparagraph (1) (l) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) in its entirety and renumbering paragraph (3) as paragraph (2), so that as amended, the new subparts (1) (f) 1. (iii), (1) (f) 1. (iv) and (1) (f) 1. (v), and the new subparagraph (1) (l) shall read:

0870-1-.04 Licensure Process.

- (1) (f) 1. (iii) Eighty-five (85) classroom hours of the five hundred (500) classroom hour requirement shall consist of related subjects including, but not limited to, business standards of practice, communication skills, CPR/First Aid, the Americans with Disabilities Act, referral methods, specialized populations, and specialized and adjunct therapies/modalities (including hydrotherapy).

- (1) (f) 1. (iv) Ten (10) classroom hours of the five hundred (500) classroom hour requirement shall consist of ethics courses.
- (1) (f) 1. (v) Five (5) classroom hours of the five hundred (500) classroom hour requirement shall consist of courses regarding Tennessee massage statutes and regulations; and
- (1) (l) Reciprocity licensure applicants must submit along with their applications copies of the statutes and rules governing the licensure/certification qualifications and process from all states in which they hold current licensure/certification. The Board will determine in its sole discretion whether the licensure/certification standards of any other state are as stringent as those of Tennessee for purposes of granting licensure under this rule. Under no circumstances shall an applicant be approved for licensure without successfully completing the five (5) classroom hours of courses regarding Tennessee massage statutes and regulations as required in subpart (1) (f) 1. (v).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, and 63-18-112.

Rule 0870-1-.05 Establishment Licensure Process, is amended by deleting subparagraph (2) (a) in its entirety, and is further amended by deleting paragraph (3), subparagraph (5) (a), and paragraph (6) in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (8) (e) in its entirety, and is further amended by deleting paragraph (12) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3), subparagraph (5) (a), and paragraphs (6) and (12) shall read:

- (3) "Applicant", for purposes of this rule shall mean the person under whose name the massage establishment shall be licensed. The applicant need not be licensed as a massage therapist. However, all persons employed to or who are providing massage therapy on the premises must be licensed by complying with the provisions of rule 0870-1-.04, or no establishment license can be issued or a previously issued license shall be processed for revocation.
- (5) (a) The applicant shall attach to the application copies of the current licenses of all massage therapists performing massage therapy at that establishment.
- (6) Except for applicants who are corporations doing business in Tennessee, every applicant shall have submitted, to the Board Administrative Office, evidence of good moral character. Such evidence shall consist of two (2) recent (within the preceding 12 months) original letters, attesting to the applicant's personal character and professional ethics.
- (12) All applications shall be sworn to and signed by the applicant and notarized.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, and 63-18-111.

Rule 0870-1-.06 Fees, is amended by deleting subparagraphs (1) (a) and (1) (c) in their entirety and substituting instead the following language, and is further amended by deleting subparagraphs (1) (h) and (2) (h) in their entirety and renumbering subparagraphs (1) (i) and (2) (i) as (1) (h) and (2) (h), so that as amended, the new subparagraphs (1) (a) and (1) (c) shall read:

- (1) (a) Individual Application Fee - A non-refundable fee to be paid by all applicants for a massage therapist's license including those seeking licensure by reciprocity. This fee includes an initial licensure fee and the state regulatory fee. In cases where an applicant is denied licensure or the application file closes due to abandonment, only the initial licensure fee will be refundable upon request. The state regulatory fee is not refundable.
- (1) (c) Biennial Licensure Renewal Fee - A non-refundable fee to be paid prior to the issuance of the renewal certificate. This fee must be received on or before the expiration date of the license.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, and 63-18-111.

Rule 0870-1-.07 Application Review, Approval, and Denial, is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph (2) shall read:

- (2) A license may be issued pursuant to the initial determination made by the Board member or the Board's consultant or designee reviewing the application. However, such determination shall not become fully effective until such time as the full Board ratifies it.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, 63-18-111, and 63-18-112.

Rule 0870-1-.08 Examination, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by deleting paragraphs (3) and (4) in their entirety, so that as amended, the new paragraph (1) shall read:

- (1) With the exception of applicants qualifying pursuant to Rule 0870-1-.05, all persons intending to apply for licensure must successfully complete one (1) of the competency examinations adopted by the Board pursuant to this Rule as a prerequisite to licensure. Such examinations must be completed prior to

application for licensure. Evidence of successful completion must be submitted by the examining agency directly to the Board Administrative Office as part of the application process contained in Rule 0870-1-.04.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-105, and 63-18-111.

Rule 0870-1-.09 Licensure Renewal, is amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (a) shall read:

- (1) (a) The due date for certification renewal is the last day of the month in which a licensee's birthday falls pursuant to the Division's "biennial renewal system" as contained on the expiration date on the renewal certificate.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-18-111.

Rule 0870-1-.11 Retirement, Inactivation, and Reactivation of Licensure, is amended by deleting the name of the rule in its entirety and substituting instead the following language, and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraph (2) (a) in its entirety and substituting instead the following language, and is further amended by deleting paragraph (3) but not its subparagraphs and substituting instead the following language, and is further amended by deleting subparagraphs (4) (a) and (4) (b) in their entirety and substituting instead the following language, so that as amended, the new name of the rule, the new paragraph (2) but not its subparagraphs, the new subparagraph (2) (a), the new paragraph (3) but not its subparagraphs, and the new subparagraphs (4) (a) and (4) (b) shall read:

0870-1-.11 Retirement, Reinstatement, Inactivation, and Reactivation of Licensure

- (2) Any licensee whose individual license has been retired may reenter active practice by doing the following:
 - (2) (a) Submit a reinstatement application to the Board Administrative Office; and
 - (3) Establishments that wish to retain their licenses but not operate as an establishment may avoid compliance with the licensure renewal process requirements by doing the following:
 - (4) (a) Submit a reactivation application to the Board Administrative Office; and
 - (4) (b) Pay the establishment biennial licensure renewal fee and state regulatory fee as provided in rule 0870-1-.06, and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-111, 63-18-104, and 63-18-111.

Rule 0870-1-.12 Continuing Education, is amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (b) but not its parts, and substituting instead the following language, and is further amended by deleting parts (4) (b) 1. and (4) (b) 4. in their entirety and substituting instead the following language, and is further amended by adding the following language as part (4) (b) 5., and is further amended by deleting subparagraph (4) (c) but not its parts, and substituting instead the following language, and is further amended by deleting parts (4) (c) 3., and (4) (c) 5. in their entirety and substituting instead the following language, and is further amended by deleting subparagraph (4) (e) in its entirety and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraph (3) (b), the new subparagraph (4) (b) but not its parts, the new parts (4) (b) 1., (4) (b) 4. and (4) (b) 5., the new subparagraph (4) (c) but not its parts, and the new parts (4) (c) 3. and (4) (c) 5. shall read:

- (3) (b) Each massage therapist must, on the biennial licensure renewal form, attest to timely attendance and completion of the required continuing education hours.
- (4) (b) The following sponsors or courses need not receive prior approval and shall constitute Board approved continuing education courses:
 - (4) (b) 1. Any approved NCBTMB or other NOCA (National Organization for Competency Assurance) approved course as described in paragraph (1).
 - (4) (b) 4. Colleges or universities accredited by the United States Department of Education as described in paragraph (1).
 - (4) (b) 5. Formal educational courses relating directly to the theory or clinical application of massage therapy sponsored by an accredited college/university or institutions approved by the Tennessee Higher Education Commission, Board of Regents or its equivalent in another state(s). If such course is taken for or assigned quarter or semester credit hours, three (3) semester hours or equivalent quarter hours shall be equivalent to fifteen (15) continuing education hours. No credits will be counted for courses failed.
- (4) (c) If a sponsor is unable to obtain, or chooses not to obtain, approval of a course from the NCBTMB or the NOCA, the sponsor may request Board approval by submitting the following information to the Board Administration Office at least forty-five (45) days prior to the proposed or scheduled date of the course:
 - (4) (c) 3. Brief resume of all lecturers including experience or training in the subject matter being taught.

(4) (c) 5. Proposed or scheduled date of course.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-18-111, and Public Chapter 234 of the Public Acts of 2005.

0870-1-.16 Officers, Consultants, Records, and Declaratory Orders, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting part (3) (b) 3. in its entirety and renumbering the present part (3) (b) 4. as (3) (b) 3., and is further amended by adding the following language as new paragraphs (5) and (6), so that as amended, the new catchline and the new paragraphs (5) and (6) shall read:

0870-1-.16 Officers, Consultants, Records, Declaratory Orders, and Screening Panels.

- (5) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.
- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-1-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-138, 63-18-108, 63-18-111, and Public Chapter 234 of the Public Acts of 2005.

Rule 0870-1-.19 Professional Ethical Standards, is amended by deleting part (1) (s) 3. in its entirety and substituting instead the following language, and is further amended by adding the following language as new subparagraph (1) (t), so that as amended, the new part (1) (s) 3. and the new subparagraph (1) (t) shall read:

- (1) (s) 3. where required by law to report to state or federal agencies; and
- (1) (t) Not practice in an unlicensed massage establishment. A massage therapist may not be prosecuted under this rule if he/she has a written statement, signed by the establishment owner and notarized, stating that the establishment is licensed prior to the date of the therapist's employment.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, and 63-18-111.

Rule 0870-1-.19 Professional Ethical Standards, is amended by adding the following language as new subparagraphs (1) (l), (1) (m) and (1) (n), and renumbering the remaining subparagraphs accordingly:

- (1) (l) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from dating or having physical relationships or clandestine meetings with any student while the student is enrolled, including the period of time between semesters of attendance; and
- (1) (m) Refrain, if the licensees are owners or employees of a massage therapy educational program approved by the Board pursuant to Rule 0870-2-.02, from soliciting or accepting any student to be a client or customer for massage therapy services while the student is enrolled, including the period of time between semesters of attendance; and
- (1) (n) Refrain from providing services when they are either physically or mentally incapable of safely doing so. The term "safely" as used in this rule means safety of the massage therapists and anyone they come in contact with during the course of professional practice; and

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-108, 63-18-111, and 63-18-115.

Repeal

Rule 0870-1-.10 Supervision – Provisional License, is repealed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-18-104, 63-18-111, and Public Chapter 232 of the Public Acts of 2005.

Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Massage Licensure Board.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 22nd day of August, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____